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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**MICHELLE CARPINELLI,  
INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

Plaintiff,

v.

**PHILLIPS & COHEN  
ASSOCIATES, LTD.,**

Defendant.

Case No.: '15CV0904 H BGS

**CLASS ACTION**

**COMPLAINT FOR DAMAGES  
FOR VIOLATION OF:**

**1. THE FAIR DEBT COLLECTION  
PRACTICES ACT, 15 U.S.C. § 1692  
ET SEQ.; AND,**

**2. THE ROSENTHAL FAIR DEBT  
COLLECTION PRACTICES ACT,  
CAL. CIV. CODE § 1788, ET SEQ.**

**JURY TRIAL DEMANDED**

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**INTRODUCTION**

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress enacted the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.
3. MICHELLE CARPINELLI ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of PHILLIPS & COHEN ASSOCIATES, LTD. ("Defendant") with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, in violation of the federal debt collection laws.

4. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
5. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.
6. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
7. Unless otherwise stated, Plaintiff alleges that any violations by Defendant were knowing and intentional, and that Defendant did not maintain procedures reasonably adapted to avoid any such violation.
8. Unless otherwise indicated, the use of Defendant in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant.

#### JURISDICTION AND VENUE

9. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692(k). In addition, jurisdiction also arises pursuant to 28 U.S.C. § 1367 for supplemental State claims.
10. This action arises out of Defendant's violations of (i) the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA"); and, (ii) the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq. ("RFDCPA").
11. Because Defendant does business within the State of California, personal jurisdiction is established.

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12. Venue is proper in the United States District Court, Southern District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides in the County of San Diego, State of California which is within this judicial district; (ii) the conduct complained of herein occurred within this judicial district; and, (iii) Defendant conducted business in this judicial district at all times relevant.

#### PARTIES

13. Plaintiff is a natural person who resides in the City of Vista, County of San Diego, State of California.

14. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation is in the State of New Jersey and principal place of business is in the State of Delaware.

15. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the ordinary course of business, regularly, on behalf of themselves or others, engage in debt collection as that term is defined by California Civil Code § 1788.2(b), and are therefore “debt collectors” as that term is defined by California Civil Code § 1788.2(c) and 15 U.S.C. § 1692a(6).

16. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h) and a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

17. Defendant in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

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**FACTUAL ALLEGATIONS**

18. At all times relevant, Plaintiff is an individual residing within the State of California.

19. At all times relevant, Defendant conducted business in the State of County of San Diego, State of California.

20. Sometime prior to 2014, Plaintiff allegedly incurred financial obligations to the original creditor.

21. These alleged finance obligations were for personal, family or household purposes, and therefore, a “debt” as that term is defined by 15 U.S.C. § 1692a(5).

22. These alleged finance obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and were therefore “debt[s]” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

23. Sometime thereafter, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of the alleged debt.

24. Subsequently, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

25. As a result, Plaintiff has received numerous written and telephonic communications from Defendant with regard to Plaintiff’s alleged debt. Said contacts constitute “communications” as that term is defined by 15 U.S.C. § 1692a(2) and “debt collection” as that phrase is defined by 15 U.S.C. § 1692a(6).

26. Specifically, Defendant sent Plaintiff Defendant’s initial written communication to Plaintiff on or about October 24, 2014.

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1 27.Said written communication merely identified Cavalry Portfolio Services  
2 LLC, a debt buyer ("Cavalry"), as Defendant's Client and also identified  
3 Cavalry's internal account number.

4 28.Defendant's October 24, 2014 written communication wholly failed to  
5 identify the original creditor or any other identifying information that would  
6 allow Plaintiff to determine which debt Defendant was attempting to collect  
7 from Plaintiff.

8 29.As a result, Plaintiff was unable to make an informed decision as to how to  
9 respond to Defendant's collection letters as a result of Defendant's  
10 omissions.

11 30.Plaintiff's ability to intelligently respond to Defendant's collection attempts  
12 was materially diminished, and confused Plaintiff, since Defendant failed to  
13 provide basic information regarding Plaintiff's alleged debt(s).

14 31.Without the true identity or account numbers associated with the debt(s)  
15 alleged to be owed to Defendant and/or Cavalry, Plaintiff was unable to  
16 verify this alleged debt.

17 32.Defendant's repeated collection attempts were presented in deceptive  
18 manners in each written communication since said written communications  
19 failed to provide basic information to Plaintiff.

20 33.Through this conduct, Defendant violated 15 U.S.C. § 1692e by using false,  
21 deceptive and misleading representations in connection with the collection  
22 of Plaintiff's alleged debt. This section is incorporated into the RFDCPA  
23 through Cal. Civ. Code § 1788.17; thus, Defendant also violated Cal. Civ.  
24 Code § 1788.17.

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34. Through this conduct, Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely representing the character, amount, and legal status of Plaintiff's alleged debt. This section is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant also violated Cal. Civ. Code § 1788.17.

35. Through this conduct, Defendant violated 15 U.S.C. § 1692e(10) by using false representations and deceptive means in connection with the collection of Plaintiff's alleged debt. This section is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant also violated Cal. Civ. Code § 1788.17.

36. Through this conduct, Defendant violated 15 U.S.C. § 1692f by unfair and unconscionable means to collect Plaintiff's alleged debt. This section is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant also violated Cal. Civ. Code § 1788.17.

37. Through this conduct, Defendant violated 15 U.S.C. § 1692f(1) by collecting a fee not expressly authorized by the agreement creating Plaintiff's alleged debt nor permitted by law. This section is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant also violated Cal. Civ. Code § 1788.17.

38. As described herein, Defendant engaged in a series of collection attempts that violated 15 U.S.C. §§ 1692e; 1692e(2)(A); 1692e(10); 1692f; and, 1692f(1). Moreover, Defendant's collection attempts also violated Cal. Civ. Code § 1788.17.

#### CLASS ALLEGATIONS

39. Plaintiff brings this action on her own behalf, and on behalf of all others similarly situated.

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1 40. Plaintiff defines the FDCPA Class as: (i) all persons; (ii) who were sent a  
2 written communication by Defendant (iii) that failed to identify the original  
3 creditor; (iv) to recover a consumer debt; (v) which was not returned by the  
4 United States Postal Service; (vi) within one year prior to the filing of the  
5 Complaint in this action.

6 41. Similarly, Plaintiff defines the RFDCPA Class as: (i) all persons with  
7 addresses within the State of California; (ii) who were sent a written  
8 communication by Defendant (iii) that failed to identify the original creditor;  
9 (iv) to recover a consumer debt; (v) which was not returned by the United  
10 States Postal Service; (vi) within one year prior to the filing of the  
11 Complaint in this action.

12 42. The FDCPA Class and the RFDCPA Class shall be referred to jointly as  
13 “The Classes.”

14 43. Defendant and its employees or agents are excluded from the Classes.

15 44. Plaintiff does not know the exact number of persons in the Classes, but  
16 believe them to be in the several hundreds, if not thousands, making joinder  
17 of all these actions impracticable.

18 45. The identity of the individual members is ascertainable through Defendant’s  
19 and/or Defendant’s agents’ records or by public notice.

20 46. There is a well-defined community of interest in the questions of law and  
21 fact involved affecting the members of the Classes. The questions of law  
22 and fact common to the Classes predominate over questions affecting only  
23 individual class members, and include, but are not limited to, the following:

- 24 a) Whether Defendant violated the FDCPA by sending using a written  
25 communication that failed to identify the original creditor to the members  
26 of the Classes;

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- b) Whether Defendant violated the RFDCPA by sending using a written communication that failed to identify the original creditor to the members of the Classes;
- c) Whether members of the Classes are entitled to the remedies under the FDCPA;
- d) Whether members of the Classes are entitled to the remedies under the RFDCPA;
- e) Whether members of the Classes are entitled to declaratory relief;
- f) Whether members of the Classes are entitled to injunctive relief;
- g) Whether members of the Classes are entitled to an award of reasonable attorneys' fees and costs of suit pursuant to the RFDCPA;
- h) Whether members of the Classes are entitled to an award of reasonable attorneys' fees and costs of suit pursuant to the FDCPA; and,
- i) Whether Defendant can satisfy the bona fide error affirmative defense.

47. Plaintiff will fairly and adequately protect the interest of the Classes.

48. Plaintiff has retained counsel experienced in consumer class action litigation and in handling claims involving unlawful debt collection practices.

49. Plaintiff's claims are typical of the claims of the Classes, which all arise from the same operative facts involving unlawful collection practices.

50. A class action is a superior method for the fair and efficient adjudication of this controversy.

51. Class-wide damages are essential to induce Defendants to comply with the federal and State laws alleged in the Complaint.

52. The interests of class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum statutory damages in an individual action under the FDCPA or RFDCPA is \$1,000. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims, e.g., securities fraud.

53. Defendant has acted on grounds generally applicable to the Classes, thereby making appropriate final declaratory relief with respect to the class as a whole.

54. Plaintiff contemplates providing notice to the putative class members by direct mail in the form of a postcard and via Internet website.

55. Plaintiff requests certification of a hybrid class combining the elements of Fed. R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P. 23(b)(2) for equitable relief.

### COUNT I

#### VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

##### 15 U.S.C. §§ 1692-1692(p) (FDCPA)

56. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

57. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, such as Defendant's abusive behavior pursuant to 15 U.S.C. § 1692d, and the deceptive means adopted by Defendant, pursuant to 15 U.S.C. § 1692e.

58. As a result of each and every violation of the FDCPA, Plaintiff, and the members of the class, are entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

### COUNT II

#### VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

##### Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)

59. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

60. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

61. As a result of each and every violation of the RFDCPA, Plaintiff, and the members of the class, are entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant individually.

### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant for:

- Certifying the Classes as requested herein;
- Appointing Plaintiff as representative of the Classes;
- Appointing Plaintiff's counsel as counsel for the Classes;
- An award of actual damages, in an amount to be determined at trial, pursuant to 15 U.S.C. § 1692k(a)(1), for each plaintiff and putative class member;
- An award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1788.30(a), for each plaintiff and putative class member;
- An award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A), for each plaintiff and putative class member;
- An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b), for each plaintiff and putative class member;
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3); and
- Any and all other relief that this Court deems just and proper.

**TRIAL BY JURY**

62. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: April 23, 2015

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By: /s/ Matthew M. Loker  
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